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SENATE BILL 658 By  
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HOUSE BILL 1430  
By Burchett

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, to impose an excise tax upon the illegal possession, delivery, sale, or manufacture of certain amounts of controlled substances or counterfeit controlled substances.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding Sections 2--11 of this act as an appropriately numbered new part.

SECTION 2. Sections 2--11 of this act shall be known and may be cited as the "Tennessee Controlled Substance and Counterfeit Controlled Substance Excise Tax Act of 1997".

SECTION 3. The purpose of this part is to levy an excise tax on persons who possess controlled substances and counterfeit controlled substances in violation of Tennessee law and to provide that a person who possesses such substances in violation of this part is guilty of a felony. Nothing in this part shall in any manner provide immunity from criminal prosecution for a person who possesses an illegal substance.

SECTION 4. As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of the Tennessee department of revenue;

(2) "Controlled substance" means a substance as defined in Tennessee Code Annotated, Section 39-17-402(4);

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(3) "Counterfeit controlled substance" means a substance as defined in Tennessee Code Annotated, Section 39-17-402(5);

(4) "Dealer" means a person who, in violation of Tennessee Code Annotated, Section 39-17-417, possesses, delivers, sells, or manufactures more than forty-two and one-half (42.5) grams of marijuana, or seven (7) or more grams of any other controlled substance or counterfeit controlled substance that is sold by weight, or ten (10) or more dosage units of any other controlled substance or counterfeit controlled substance that is not sold by weight.

(5) "Deliver" means the same as is defined in Tennessee Code Annotated, Section 39-17-402(6);

(6) "Manufacture" means the same as is defined in Tennessee Code Annotated, Section 39-17-402(14);

(7) "Marijuana" means the same as defined in Tennessee Code Annotated, Section 39-17-402(15); and

(8) "Person" means the same as defined in Tennessee Code Annotated, Section 39-17-402(19).

## SECTION 5.

(a) An excise tax is levied on controlled substances and counterfeit controlled substances possessed by dealers at the following rates:

(1) At the rate of three dollars and fifty cents (\$3.50) for each gram, or fraction thereof, of marijuana or counterfeit marijuana.

(2) At the rate of two hundred dollars (\$200) for each gram, or fraction thereof, of any other controlled substance or counterfeit controlled substance that is sold by weight.

(3) At the rate of four hundred dollars (\$400) for each ten (10) dosage units, or fraction thereof, of any other controlled substance or counterfeit controlled substance that is not sold by weight.

(b) A quantity of marijuana or other controlled substance is measured by the weight of the substance in the dealer's possession, whether pure or impure or dilute, or by dosage units in the dealer's possession when the substance is not sold by weight. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

SECTION 6. The commissioner shall issue stamps to affix to controlled substances and counterfeit controlled substances to indicate payment of the tax required by this part. Dealers shall report the taxes payable under this part at the time and on the form prescribed by the commissioner. Dealers are not required to give their name, address, social security number, or other identifying information on the form. Upon payment of the tax, the commissioner shall issue stamps in an amount equal to the amount of tax paid. Taxes may be paid and stamps may be issued whether by mail or in person.

SECTION 7. The tax imposed by this part is payable by any dealer who possesses a controlled substance or counterfeit controlled substance in this state upon which a tax has not been paid, as evidenced by a stamp. The tax is payable within forty-eight (48) hours after the dealer acquires a non-tax-paid controlled substance or counterfeit controlled substance, exclusive of Saturdays, Sundays, and legal holidays of this state, in which case the tax is payable on the next working day. Upon payment of the tax, the dealer shall permanently affix the appropriate stamps to the controlled substance or counterfeit controlled substance. Once the tax has been paid, no additional tax is due under this part even though the controlled substance or counterfeit controlled substance may be handled by other dealers.

SECTION 8.

(a) A dealer who violates this part is guilty of a Class E felony, and is subject to an additional penalty of one hundred percent (100%) of any tax due from the dealer.

(b) Notwithstanding the provisions of Tennessee Code Annotated, Section 40-2-101, to the contrary, prosecution for a violation of this part shall commence within six (6) years of the date of the offense.

SECTION 9. Notwithstanding any other provision of law to the contrary, an assessment against a dealer who possesses a controlled substance or counterfeit controlled substance to which a stamp has not been affixed as required by this part shall be made as provided in this section. The commissioner shall assess a tax, applicable penalties, and interest based on personal knowledge or information available to the commissioner. The commissioner shall notify the dealer in writing of the amount of the tax, penalty and interest due and demand its immediate payment. The notice and demand shall either be mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty and interest immediately upon receipt of the notice and demand, the commissioner shall collect the tax, penalty and interest pursuant to the procedure provided by law for the collection of other unpaid excise taxes. The commissioner shall use all means available to collect the tax, penalty and interest from any property in which the dealer has a legal, equitable or beneficial interest. The dealer may seek review of the assessment as provided by law for other unpaid excise taxes.

#### SECTION 10.

(a) Notwithstanding the provisions of Tennessee Code Annotated, Section 10-7-503, information obtained pursuant to this part is confidential and may not be disclosed or, unless independently obtained, used in a criminal prosecution other than a prosecution for a violation of this part. Stamps issued pursuant to this part may not be used in a criminal prosecution other than a prosecution for a violation of this part. This

section does not prohibit the commissioner from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports.

(b) It is a Class A misdemeanor to knowingly disclosed information obtained pursuant to this part.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. For the purpose of the commissioner promulgating rules and regulations for the administration and enforcement of this part, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, including the collection of the taxes imposed by the part, it shall take effect on July 1, 1997, the public welfare requiring it.